

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY
Vol. 2, Pages 84-164

UNITED STATES OF AMERICA, et al
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION,
et al,
Defendants

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02110
Thursday, November 16, 2023

REPORTER: CHERYL B. PALANCHIAN, RMR, CRR
Official Court Reporter
United States District Court
One Courthouse Way, Boston, MA 02110

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For Defendant Spirit Airlines, Inc.

I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

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EXHIBITS

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1 (Proceedings, 11:16 a.m.)

2 THE CLERK: Court is back in session. You may be
3 seated.

4 THE COURT: Counsel, you may proceed.

5 MR. HAUSER: Your Honor, on the break I reviewed
6 my outline and have no questions. Thank you.

7 THE COURT: You don't?

8 MR. HAUSER: No.

9 THE COURT: That's fine. You may step down.

10 (Whereupon the witness stepped down.)

11 MR. DUFFY: Yes, your Honor, the government will
12 be calling Ms. Hurley from JetBlue as an adverse witness.

13 THE COURT: And you may.

14 MR. DUFFY: Your Honor, before we begin
15 Ms. Hurley's examination, there are some confidentiality
16 issues related to some exhibits that will be presented to
17 this witness, I believe. This is one issue where the
18 parties have not agreed on a confidentiality matter.

19 THE COURT: Thank you for the heads-up. Shall we
20 address it when it arises?

21 MR. DUFFY: Whatever the Court prefers, of course.

22 THE COURT: Yeah, why don't we do that. I'll be
23 in a better position to address it.

24 THE CLERK: Will you please remain standing and
25 raise your right hand?

1 URSULA L. HURLEY, sworn

2 THE CLERK: You can be seated.

3 THE WITNESS: Thank you.

4 THE COURT: And, Ms. Markel, you may continue, or
5 proceed.

6 MS. MARKEL: Thank you, your Honor. Arianna
7 Markel for the United States.

8 DIRECT EXAMINATION

9 BY MS. MARKEL:

10 Q. Good morning, Ms. Hurley. Would you please state and
11 spell your full name, for the record?

12 A. My name is Ursula Lauren Hurley, U-R-S-U-L-A,
13 L-A-U-R-E-N, H-U-R-L-E-Y.

14 Q. There should be a binder of exhibits and your
15 deposition testimony on the stand. I will let you know at
16 the time when I am going to use an exhibit.

17 A. Thank you.

18 Q. Ms. Hurley, where do you currently work?

19 A. I work at JetBlue Airways.

20 Q. And you've been employed by JetBlue since graduating
21 from college in 2004; right?

22 A. Correct.

23 Q. And what is your current position at JetBlue?

24 A. I'm currently the chief financial officer.

25 Q. And when did you become JetBlue's CFO?

1 A. Just over two years ago.

2 Q. And as CFO you oversee a few departments; right?

3 A. Correct.

4 Q. You oversee financial planning and analysis; is that
5 right?

6 A. Correct.

7 Q. And that is the group that's responsible for developing
8 JetBlue's five-year financial plans; right?

9 A. As well as many other things, but yes.

10 Q. And a five-year financial plan is the five-year
11 financial outlook for the company; right?

12 A. Yes.

13 Q. And as CFO, you also oversee fleet planning; is that
14 right?

15 A. Correct.

16 Q. And fleet planning includes managing JetBlue's
17 contracts and relationships with aircraft manufacturers like
18 Airbus; right?

19 A. Correct.

20 Q. And the fleet planning team also works closely with
21 JetBlue's network team; right?

22 A. Yes.

23 Q. And together the fleet planning team and the network
24 team ensure that JetBlue's fleet plan aligns with JetBlue's
25 growth strategy; is that right?

1 A. Correct.

2 Q. And as CFO you're also part of JetBlue's senior
3 leadership team; right?

4 A. Correct.

5 Q. And you report to Mr. Robin Hayes?

6 A. Yes.

7 Q. And as CFO you often attend board meetings as well;
8 right?

9 A. Correct.

10 Q. And so you routinely provide information to the board
11 regarding JetBlue's financial plans?

12 A. Yes.

13 Q. And you've also assessed the potential financial impact
14 of this deal on JetBlue; right?

15 A. Correct.

16 Q. And you assessed the economic environment and its
17 implications for JetBlue; right?

18 A. Which are ever-evolving, yes.

19 Q. So let's turn to the deal at hand. In February of
20 2022, you learned that Spirit and Frontier had entered into
21 a merger agreement; right?

22 A. Correct.

23 Q. And in the days following that announcement, you
24 discussed the Spirit-Frontier transaction with Mr. Hayes;
25 right?

1 A. Correct.

2 Q. And you and Mr. Hayes discussed what the
3 Frontier-Spirit transaction could mean for JetBlue; right?

4 A. Yes. I mean, Mr. Hayes wasn't the only one we had
5 conversations about. This was an industry deal that was
6 going to have impact across many airlines, not only JetBlue.

7 Q. And a Frontier-Spirit combination could impact
8 JetBlue's position in the industry; right?

9 A. Any merger in the airline industry could impact
10 JetBlue, so yes.

11 Q. And so a decision was made to -- by JetBlue to revisit
12 its 2019 analysis of a potential JetBlue-Spirit deal; right?

13 A. Correct.

14 Q. And so that work included putting together a model of
15 the combined company; right?

16 A. Correct.

17 Q. And that model included a fleet plan for the combined
18 company; right?

19 A. Correct.

20 Q. Okay. So now turning to late March of 2022, JetBlue
21 made an offer to acquire Spirit; right?

22 A. Yes.

23 Q. So let's briefly discuss some of the diligence that
24 JetBlue did after it submitted its proposal to Spirit. In
25 the spring of 2022, Spirit opened a data room to share

1 information with JetBlue; right?

2 A. Correct.

3 Q. And JetBlue received a copy of Spirit's fleet plan;
4 right?

5 A. Correct, as well as many other documents.

6 Q. And that fleet plan included Spirit's order book;
7 right?

8 A. Correct.

9 Q. And an order book is basically a schedule for an
10 airline's contractual aircraft deliveries; right?

11 A. Correct.

12 Q. And so Spirit's order book includes firm aircraft
13 deliveries from Airbus; right?

14 A. It can, yes.

15 Q. And firm aircraft deliveries means that Spirit and
16 Airbus had contracted for those deliveries already; right?

17 A. Correct.

18 Q. Okay. And so as part of this acquisition, JetBlue
19 would take over Spirit's contractual order book with Airbus;
20 right?

21 A. Yes.

22 Q. And Spirit's fleet plan also included what are called
23 committed aircraft leases; right?

24 A. Correct.

25 Q. And so, in other words, those are aircraft that Spirit

1 had contracted to lease from aircraft lessors; right?

2 A. Correct.

3 Q. And so as part of this acquisition, JetBlue would take
4 over Spirit's committed aircraft leases as well; right?

5 A. Correct.

6 Q. And Spirit's fleet plan also includes aircraft options
7 with Airbus; right?

8 A. Correct.

9 Q. And what are aircraft options?

10 A. It's exactly that. At a point in time you can
11 determine if you want to convert that aircraft to a firm
12 commitment.

13 Q. And so as part of this acquisition, JetBlue would take
14 over Spirit's contractual options with Airbus; right?

15 A. It's exactly an option, so we don't -- we're not
16 technically committed to take that as a firm aircraft until
17 we notify Airbus. So, yes, we would assume Spirit's
18 contract with Airbus, which includes firm aircraft as well
19 as the ability to, and access to those options.

20 Q. And what does -- I think you alluded to this, but what
21 does it mean to convert an option?

22 A. You notify -- usually there's a defined time period
23 where you need to notify Airbus to convert an option to a
24 firm commitment that you will definitively take from Airbus.

25 Q. And there's typically a notification period for

1 aircraft options; right?

2 A. Correct.

3 Q. And what is the notification period?

4 A. It's a defined number of months whereby which you need
5 to notify them that you want to move that option to a firm
6 aircraft.

7 Q. So, for example, like about how long is JetBlue's
8 notification period with Airbus?

9 A. So our notification with Airbus is 24 months.

10 Q. Okay. So let's, for example, consider a JetBlue option
11 for January of 2026. When does JetBlue need to notify
12 Airbus that it wants to convert that option to a firm
13 delivery for January of 2026?

14 A. So 24 months prior, so that would be January of 2024.
15 I also want to note that different airlines might have
16 different notification periods. As I mentioned, ours is 24
17 months but airlines might have different notification
18 periods.

19 Q. And so over the course of this deal you've come to
20 learn Spirit's notification period with Airbus as well;
21 right?

22 MR. COHEN: Your Honor, I think we're now heading
23 into something confidential, so if I may be heard.

24 THE COURT: You may be.

25 MR. COHEN: We, at the direction of Airbus, have

1 treated the Spirit notification period, as well as the
2 number of options, as being a confidential number. And --

3 THE COURT: All right. I certainly accept that
4 you have.

5 Why is this relevant?

6 MS. MARKEL: This is relevant, your Honor, because
7 the number of -- the -- excuse me -- the notification period
8 shows the lead time that airlines need to actually acquire
9 the options, and it also will come into play because of
10 testimony that I expect that you'll hear regarding JetBlue's
11 denial of Spirit's request to exercise options and when that
12 denial happened.

13 THE COURT: Well, the denial I certainly think you
14 can inquire about, but the actual number or distance out I
15 don't -- I'm not clear I need that. So go ahead, excluding
16 that, but at least for now I don't want to cramp your
17 interrogation save for the actual number. Can you do that?

18 MS. MARKEL: I can do that, your Honor, but the
19 number might come into play later on and I will flag it for
20 you then.

21 THE COURT: That would be helpful. Go ahead.

22 MS. MARKEL: Thank you.

23 Q. So without disclosing the, at this point in time, the
24 notification period, is it true that over the course of this
25 deal that you've come to learn Spirit's notification period

1 with Airbus?

2 A. Yes.

3 Q. Okay. So in addition to receiving Spirit's fleet plan,
4 Spirit also provided JetBlue with its five-year financial
5 plan in the spring of 2022; right?

6 A. Correct.

7 Q. And Spirit's five-year financial plan projected that
8 Spirit would acquire more aircraft than what was in its
9 fleet plan; right?

10 A. Correct.

11 Q. And throughout the spring of 2022 you attended some
12 diligence sessions with Spirit; right?

13 A. Yes.

14 Q. And during some of those diligence sessions you
15 discussed Spirit's aircraft delivery schedule; right?

16 A. Correct.

17 Q. And you discussed Spirit's five-year financial plan
18 during some of those diligence sessions as well; right?

19 A. At a high level, yes.

20 Q. And in some of those diligence sessions you also
21 discussed whether Spirit was contemplating any incremental
22 leases beyond what was in Spirit's order book; right?

23 A. Yes. Aircraft delivery schedules were one of the
24 topics that we discussed during diligence.

25 Q. So now I'd like to turn to the topic of fleet

1 rationalization. You're familiar with that term; right?

2 A. That term is used in different ways as we talk about
3 aircraft delivery schedules and how we're managing those.
4 So it can be interpreted in different ways based on the
5 context that you provide. So, yes, I'm very familiar with
6 the term.

7 Q. And fleet rationalization could include, as one of
8 those ways, reducing the number of aircraft when combining
9 two fleets of two separate entities; right?

10 A. That is one way, yes.

11 Q. Okay. And this is not the first time that JetBlue has
12 considered a JetBlue-Spirit combination; right?

13 A. Correct.

14 Q. It also considered acquiring Spirit back in 2019 and
15 2020; right?

16 A. Yes.

17 Q. And at that time JetBlue was contemplating reducing the
18 number of aircraft for a combined company; right?

19 A. That was one scenario, that that was presented prior
20 to, you know, seriously discussing and contemplating a
21 potential approach to Spirit.

22 THE COURT: I just want to be sure I understand.

23 In the 2019 proposal, as far as you analyzed it, it would
24 reduce the number of aircraft in the combined entity below
25 what the inventory of aircraft in both separate entities and

1 what was on order would otherwise be. Have I said that
2 right?

3 THE WITNESS: Correct.

4 THE COURT: And it did contemplate that?

5 THE WITNESS: Correct, at that point in time.

6 THE COURT: At that point.

7 THE WITNESS: Uhm-hmm.

8 THE COURT: But JetBlue, if it was going to be the
9 surviving company in the 2019 merger, it nevertheless would
10 have a bigger fleet?

11 THE WITNESS: Of course. Of course.

12 THE COURT: All right.

13 Q. So let's discuss some of the ways that reducing the
14 number of aircraft for a combined company could benefit
15 JetBlue. Reducing the number of aircraft for a combined
16 company is one lever that JetBlue could use to reduce its
17 debt; right?

18 A. Correct. But there are also many other levers that can
19 be utilized in order to reduce debt. Right? Like driving
20 increased revenue, reducing costs, deciding if we finance
21 aircraft or not finance aircraft. So there are many ways in
22 which you can manage your debt level outside of any
23 rationalization.

24 Q. And reducing the number of aircraft is one way of doing
25 that; right?

1 A. It is. But I also want to remind everyone, we have
2 contractual obligations to Airbus. These are contracts that
3 we are committed to take these deliveries. So there's no
4 contractual right for us to exit or defer or just not take
5 delivery of aircraft.

6 Q. But you are not required to exercise any options;
7 right?

8 A. Correct. That's -- an option is an option. Right? So
9 you have the ability to determine whether you want to turn
10 that into a firm aircraft or not.

11 Q. So deciding not to exercise options is one lever that
12 JetBlue could use to reduce its debt; right?

13 A. So an option is just an option, as we discussed. So
14 those are outside of the base case that we're assuming when
15 we combine JetBlue and Spirit. So between the two
16 companies, we have options -- we have between 60 and 70
17 options between the two companies. And so at that point in
18 time, given market dynamics, we will make the appropriate
19 decision whether we want to convert those to more firm
20 aircraft to further boost our growth trajectory.

21 THE COURT: Because we've got a contemplated 2019
22 merger and we have the present agreed merger that's being
23 tested here, which one are you talking about in answer to
24 the question?

25 THE WITNESS: Yeah, the current one.

1 THE COURT: Thank you.

2 THE WITNESS: The current one.

3 THE COURT: Thank you.

4 Q. And just to be clear, JetBlue's deal model assumed the
5 exercise of some options; right?

6 THE COURT: And, again, I want to be clear what
7 we're talking about, the merger that's before the Court or
8 this earlier testing of the waters?

9 MS. MARKEL: Thank you, your Honor. I'm talking
10 about the merger before the Court.

11 THE COURT: Thank you. We'll assume you are
12 unless you tell me otherwise.

13 MS. MARKEL: Thank you, your Honor.

14 THE COURT: And I'll try to be quiet. Go ahead.

15 Q. So the deal model to the current iteration of this deal
16 assumes the exercise of some options; right?

17 A. No, it did not. They are options and, again, there's
18 notification periods that we have. And I manage our fleet
19 portfolio with flexibility, through the lens of flexibility.
20 So we will make the decision at the appropriate point in
21 time, which we're required to do contractually, to change
22 those options to firm aircraft depending on the market
23 dynamics at that point in time.

24 Q. Okay. And returning back to what reducing the number
25 of aircraft could do for JetBlue, reducing the number of

1 aircraft for the combined company is also one lever that
2 JetBlue could use to increase its free cash flow; right?

3 A. So, I just want to be explicitly clear. So in our deal
4 model we do not assume that we decrease the number of
5 aircraft. So we --

6 Q. Ms. Hurley, I was not asking about the deal model and
7 any of the assumptions. My question is just very general:
8 Reducing the number of aircraft for the combined company is
9 one lever that JetBlue could use to increase free cash flow?

10 A. That is one lever that can be utilized to manage free
11 cash flow.

12 Q. Okay. Thank you. And reducing the number of aircraft
13 for the combined company is also one lever that JetBlue
14 could use to slow its growth; right?

15 A. Yes.

16 Q. Okay. So now let's turn to Spirit's November 2022
17 request under the merger agreement to acquire additional
18 aircraft for 2025 and 2026. You are aware that JetBlue --
19 that the JetBlue-Spirit merger agreement has what are called
20 interim operating covenants; right?

21 A. Correct.

22 Q. And those are sometimes referred to as IOCs?

23 A. Correct.

24 Q. Okay. And under the IOCs of this deal, there are
25 certain items for which Spirit must seek JetBlue's consent

1 prior to the deal closing; right?

2 A. Correct.

3 Q. And under the IOCs Spirit must seek JetBlue's consent
4 prior to leasing any additional aircraft; right?

5 A. Above and beyond what we had originally agreed upon
6 prior to executing the merger agreement, yes.

7 Q. Thank you. And under the IOCs Spirit must also seek
8 JetBlue's consent prior to exercising any additional
9 aircraft options that have not yet been exercised; right?

10 A. Yes.

11 Q. And JetBlue and Spirit negotiated these IOCs; right?

12 A. Correct.

13 Q. And during those negotiations, Spirit requested the
14 flexibility to convert its options at any point in time;
15 right?

16 A. They did.

17 Q. And JetBlue did not agree to Spirit's request; right?

18 A. So just to put this in context, we were negotiating
19 with Spirit on a full-fledged merger agreement back in July
20 of 2022. And as part of that merger agreement were these
21 IOCs. And so we were negotiating back and forth, not only
22 about aircraft but liquidity levels, about debt levels. And
23 you can imagine, aircraft is the largest purchase that an
24 airline makes. As so what we did back in July is agree upon
25 a fleet plan that Spirit had contractual commitments to

1 deliver to. And then if they wanted to do anything above
2 and beyond that agreed-upon fleet plan, we wanted to be able
3 to have a discussion and to be able to consent to that in
4 light of an aircraft is an expensive asset. So, yes, that
5 is what transpired and that's what we've been operating
6 under as the IOCs.

7 Q. So, ultimately, just referring back to my question,
8 JetBlue did not agree to Spirit's request, right, for
9 flexibility to convert its options at any point in time?

10 MR. SHORES: Objection, asked and answered.

11 THE COURT: No, overruled. You may have it.

12 A. We did not agree at that point in time.

13 Q. Okay. And you would agree that the interim operating
14 covenants were important to JetBlue in negotiating this
15 deal; right?

16 A. Of course. I mean, these are typical covenants that
17 exist in, from what I understand, many merger and
18 acquisition transactions. So, obviously, aircraft in this
19 specific instance was very important.

20 Q. And it's important because they help ensure that
21 Spirit's business is not materially changed between the
22 signing of the merger agreement and closing; right?

23 A. Correct.

24 Q. And it was important to Spirit -- or, sorry, it was
25 important to JetBlue that Spirit could not unilaterally

1 decide to convert any of its aircraft options; right?

2 A. Correct.

3 Q. So let's turn to the document marked QT in your binder.

4 MS. MARKEL: And I think this may have some
5 agreed-upon redactions, but this can be published.

6 (On screen.)

7 Q. Ms. Hurley, you received this e-mail that was sent on
8 November 3rd, 2022; right?

9 A. Correct.

10 Q. The sender is Leticia Lamarque?

11 A. Yes.

12 Q. She is one of Spirit's in-house counsel; right?

13 A. Correct.

14 Q. And the subject of this e-mail exchange is, "Spirit/JB
15 merger agreement section 5.1, IOC request for consent."
16 Right?

17 A. Yes.

18 MS. MARKEL: At this time I move to admit the
19 document marked as QT in evidence.

20 MR. SHORES: No objection, your Honor.

21 THE COURT: QT may be admitted and it is
22 Exhibit 794.

23 THE CLERK: 798, Judge.

24 THE COURT: 798 we're up to. 798.

25 (Exhibit 798 received in evidence.)

1 Q. And so Ms. Lamarque's e-mail includes several requests
2 for JetBlue's consent under the interim operating covenants;
3 right?

4 A. Correct.

5 Q. I'm going to just focus on two of those requests.
6 Let's focus on the paragraph next to the number 2. One of
7 Spirit's requests is for consent to acquire up to 21
8 additional aircraft for delivery in 2025; is that right?

9 A. Correct.

10 Q. And Spirit is proposing to acquire those 21 aircraft
11 through direct leases; right?

12 A. Correct.

13 Q. And another request by Spirit is to acquire up to 6
14 additional aircraft for delivery in 2026; right?

15 A. Yes.

16 Q. And Spirit was proposing to acquire those 6 aircraft
17 through either direct leases or exercising existing options;
18 is that right?

19 A. Correct.

20 Q. Okay. So I'll come back to these two requests a bit so
21 I'll call them the incremental aircraft request. Is that
22 okay?

23 A. Sure.

24 Q. Okay. Thank you. So underneath the incremental
25 aircraft request, Ms. Lamarque writes, "The above would

1 permit Spirit to meet the following five-year plan for
2 aircraft deliveries." Do you see that?

3 A. Yes.

4 Q. And below that Ms. Lamarque includes a chart showing
5 five-year plan aircraft deliveries. And the aircraft
6 deliveries in this chart include three different categories
7 of aircraft deliveries; right?

8 A. Yes.

9 Q. So the first category in this chart is deliveries from
10 Spirit's order book. Do you see that?

11 A. Yes.

12 Q. And then the second category is committed direct
13 leases; right?

14 A. Yes.

15 Q. And then the third category is incremental aircraft.
16 Do you see that?

17 A. I do.

18 Q. The incremental aircraft here was not reflected in
19 Spirit's order book; right?

20 A. Correct.

21 Q. But it was reflected in Spirit's five-year financial
22 plan; right?

23 A. Correct.

24 Q. Okay. You can put that exhibit aside.

25 Ms. Hurley, you discussed Spirit's incremental aircraft

1 request with some of your colleagues at JetBlue; right?

2 A. Correct.

3 Q. It was your view that JetBlue should not consent to
4 Spirit's request for incremental aircraft; right?

5 A. I did not think it was the appropriate time to commit
6 to incremental aircraft.

7 Q. And you discussed Spirit's incremental aircraft request
8 with Mr. Hayes; right?

9 A. He was one of the individuals.

10 Q. Did Mr. Hayes agree with your view?

11 A. It was my recommendation.

12 Q. And did Mr. Hayes agree with your recommendation?

13 A. I believe so.

14 Q. And you also discussed the incremental aircraft request
15 with JetBlue's general counsel, Brandon Nelson; right?

16 A. Yes.

17 Q. And Mr. Nelson told you that he discussed Spirit's
18 request with Spirit; right?

19 A. So what happened, from what I understand, with this
20 specific request, is that the working teams discussed the
21 request and we relayed that we didn't think it was
22 appropriate at this point in time. We believe we had time
23 in the future in order to make aircraft -- incremental
24 aircraft decisions in the years 2025 and 2026. So the
25 working teams discussed this and relayed our initial

1 thoughts on this request to the Spirit team.

2 Q. So I will come back to that. But I want to first
3 return to my actual question, which was Mr. Nelson told you
4 that he discussed Spirit's request with Spirit; right?

5 MR. SHORES: Objection, asked and answered, your
6 Honor.

7 THE COURT: Yeah, I have notes on this.
8 Sustained.

9 MS. MARKEL: Okay.

10 THE COURT: It was discussed. That's the sense I
11 get from her testimony.

12 THE WITNESS: Yes.

13 THE COURT: And she confirms it.

14 Q. Ms. Hurley, you reference the working team section;
15 right?

16 A. Correct.

17 Q. Who is the working team?

18 A. Some of the other folks on this e-mail, so Dora, Derek.
19 And I believe that they relayed some initial feedback to the
20 appropriate folks at Spirit equivalent to their level.

21 Q. Is Mr. Nelson on the working team?

22 A. No.

23 Q. Well, do you know what Mr. Nelson conveyed to Spirit
24 with respect to the incremental aircraft request?

25 MR. SHORES: Objection. I believe this has also

1 been asked and answered, your Honor.

2 THE COURT: No, I don't know, but --

3 THE WITNESS: Listen, I don't believe that --

4 THE COURT: Wait, wait, wait.

5 THE WITNESS: Go ahead.

6 THE COURT: Thank you.

7 THE WITNESS: Sorry.

8 THE COURT: I play a small role, but I really have
9 to play my role.

10 THE WITNESS: Yes, understood.

11 THE COURT: I'm going to sustain that. She
12 doesn't really know what they talked about. She can tell us
13 what she understands happened. So why don't you frame it in
14 that way.

15 MS. MARKEL: Okay.

16 Q. Ms. Hurley, you discussed this request with Derek
17 Klinka; right?

18 A. Yes.

19 Q. And what was Mr. Klinka's role at JetBlue at this time?

20 A. So he was working on a lot of the modeling that
21 supports the deal and the financial analysis.

22 Q. Okay. And so let's turn to the document marked QN in
23 your binder.

24 MS. MARKEL: And this is a document for which I
25 think there are outstanding privilege -- sorry, outstanding

1 confidentiality disputes, but I'm happy to, at this time,
2 just show defendants' proposed redacted version.

3 (On screen.)

4 Q. Okay. So this is a continuation of the e-mail chain
5 that we were looking at earlier; right?

6 A. Correct.

7 Q. And you received this topmost e-mail sent from
8 Mr. Klinka; right?

9 A. Correct.

10 MS. MARKEL: At this time, I move to admit the
11 document marked as QN in evidence.

12 MR. SHORES: No objection, your Honor.

13 THE COURT: QN is admitted, Exhibit 799 in
14 evidence.

15 (Exhibit 799 received in evidence.)

16 Q. Let's take a look at Mr. Klinka's November 6th e-mail
17 from 4:33 p.m. which starts at the page ending in 988 and
18 continues on to 989.

19 A. Okay.

20 Q. And so in this e-mail Mr. Klinka provided you with two
21 charts, one titled, "Financials" and one titled "Fleet." Do
22 you see that?

23 A. Yes.

24 Q. I'm going to focus on the second chart titled, "Fleet."
25 The first row in the fleet chart provides the, "Total fleet

1 count in Spirit's five-year plan to meet growth plan." Do
2 you see that?

3 A. I do.

4 Q. And the second row in the fleet chart provides, "Total
5 committed/firm fleet count at deal signing." Do you see
6 that?

7 A. Yes.

8 Q. So this second row reflects the number of Spirit's
9 fleet that JetBlue used in its deal model; right?

10 A. Correct.

11 Q. And this fleet chart shows that JetBlue assumed fewer
12 Spirit aircraft deliveries in its deal model than what
13 Spirit assumed in its five-year financial plan; right?

14 A. Correct.

15 Q. So Spirit's five-year financial plan contemplated an
16 additional 21 aircraft deliveries for 2025; right?

17 A. Correct.

18 Q. And as we've been discussing, one of Spirit's
19 incremental aircraft requests was to acquire 21 additional
20 aircraft for 2025; right?

21 A. Correct.

22 Q. Okay. Now, take a look at the second paragraph of
23 Mr. Klinka's e-mail which is right above the charts he had
24 included. So Mr. Klinka writes to you, "The second section
25 (fleet) covers the aircraft ask. They are trying to fill in

1 the gaps in their 2025-26 fleet plan through direct leases
2 and option exercises. This is not surprising, given their
3 five-year financial plan growth required more aircraft than
4 what their committed/firm fleet plan contemplated."

5 There Mr. Klinka is describing the fleet chart that we
6 were just looking at; right?

7 A. Correct.

8 Q. And Mr. Klinka then continues, "However, as we
9 mentioned on our earlier note, we do not believe the
10 combined entity will need this many aircraft and thus, and
11 so if given the choice, we would prefer not to take them."

12 So that was what Mr. Klinka wrote to you; right?

13 A. Correct, those are Derek's words.

14 Q. And you agreed with Mr. Klinka's assessment?

15 A. In the e-mail from November 7th at 10:09, I
16 specifically say that at this point I did not think it was
17 appropriate to add incremental aircraft above and beyond the
18 fleet count that we used at deal signing.

19 Q. Great. Let's look at your response at 10:09 a.m. And
20 that's the third paragraph -- and, specifically, let's look
21 at the third paragraph of your response. So you wrote, "In
22 regards to aircraft, we spent a significant amount of time
23 negotiating this specific ask." That's a reference to
24 Spirit's request for flexibility to convert options at any
25 time during negotiations of the merger agreement; right?

1 A. Back in July we spent a significant amount of time
2 aligning on the committed order book. So we had worked
3 through that in July, and here we are in November now
4 revisiting this.

5 Q. And so you then continue, "We made this clear when we
6 closed the IOCs four months ago." So JetBlue had made it
7 clear to Spirit that it did not want Spirit to acquire any
8 new aircraft before closing; right?

9 A. We had -- again, we had agreed upon an aircraft
10 delivery plan that Spirit had commitments to deliver on back
11 in July. So we had agreed to that. That happened during
12 the IOCs, and that's what I'm highlighting here, is we
13 already discussed this and here we are, you know, a few
14 months later whereby Spirit is now asking for incremental
15 aircraft that I didn't think it was necessary to proceed
16 with at this point in time, given market dynamics, as well
17 as I believed we had time to work through the 2025 and 2026
18 delivery schedule.

19 Q. So I guess despite JetBlue making this clear to Spirit,
20 Spirit still came back to JetBlue in November 2022 and asked
21 for consent to acquire additional aircraft; right?

22 A. Correct.

23 Q. You then continue, "At this point I have little to no
24 interest in increasing the size of our combined order
25 books." Do you see that?

1 A. I do.

2 Q. So at this point in time, you had little to no interest
3 in increasing the number of aircraft for the combined
4 company; right?

5 A. Correct. At that point in time, which was close to two
6 and a half years prior to the time frame in which these
7 aircraft would be scheduled to deliver. And, quite frankly,
8 we all understand how volatile the environment is that we
9 live in. So at this specific moment in time, I did not
10 think these aircraft were necessary.

11 Q. Okay. And then you continued in your e-mail response,
12 "I want to ensure we reiterate this point. There are
13 options they can explore to provide us flexibility, one of
14 them being decreasing their Airbus notification period." Do
15 you see that?

16 A. I do.

17 Q. So you were suggesting that Spirit could instead try to
18 negotiate a shorter notification period with Airbus for
19 exercising its options; right?

20 A. Just to be clear, the way that I manage our fleet
21 portfolio is flexibility. We live in a dynamic environment
22 and so I don't want to have to make decisions prior to when
23 is necessary. And so what I was saying, I was highlighting
24 that there's probably other levers that Spirit could explore
25 to give us more flexibility, one of them being an Airbus

1 notification period. It was just a suggestion and I was
2 highlighting that I value flexibility and how can we help
3 them work through that.

4 Q. And a shorter notification period would mean that
5 Spirit would not have to decide whether to exercise its
6 options prior to the deal closing; right?

7 A. Yeah. Well, a notification period is defined and
8 attached to the Airbus contract. So depending on -- I mean,
9 the deal is not associated with that. Right? Like, it's an
10 Airbus contract with a notification period in it.

11 THE COURT: But you're pointing out that in the --
12 at least in your experience, and I guess it's true with
13 JetBlue -- in your contracts with Airbus, the notification
14 period is set out?

15 THE WITNESS: It is.

16 THE COURT: And you're assuming, or maybe you
17 know, that in Spirit's contracts you're assuming that their
18 notification period is set out as a contractual requirement?

19 THE WITNESS: From what I understand, yes, and
20 different airlines can have different notification periods.

21 THE COURT: And you so testified. Yes. Go ahead.

22 Q. And if -- without revealing the number, because this
23 is --

24 THE COURT: Well, let's not horse around. And
25 maybe I can ask counsel. In your agreement with Airbus,

1 when you say you agreed to treat it confidential, does that
2 mean that I can't know it?

3 MR. COHEN: No, your Honor, you can know it. It
4 can't be publicly --

5 THE COURT: Well, then, it seems to me, and now I
6 understand the relevance, that it can be conveyed to me.
7 It's not disputed. It need not be mentioned in open court,
8 either by this witness or by counsel, but I will have the
9 information. And if that becomes crucial in my opinion,
10 then I'm going to have to wrestle with that issue. So we'll
11 deal with it that way.

12 MS. MARKEL: Thank you, your Honor.

13 Q. And, Ms. Hurley, if you could just turn to the first
14 page of Exhibit 799, point number 3(b)(i), without -- oh,
15 it's QN. It's that same document that we're looking at.
16 That accurately reflects the notification period for
17 Spirit's options; right?

18 A. Sorry. Could you clarify what you're referencing?

19 Q. Sure. It's the first page of this document that --

20 A. Exhibit QN?

21 Q. QN, correct. And this is an e-mail actually from
22 Mr. Klinka to you?

23 THE COURT: The data is in the -- if you look at
24 the first page in the subparagraph "I" there, what we're
25 skirting around is set forth there, and I will treat it as

1 confidential unless I have further conference with the
2 parties. But we see that there. You see it?

3 THE WITNESS: I do.

4 THE COURT: All right. Go from there.

5 Q. And you understand that number to be Spirit's
6 notification period with Airbus; right?

7 A. Correct.

8 Q. Okay, thank you. And so at the time of this request,
9 of the incremental aircraft request, JetBlue and Spirit were
10 supposed to be operating as independent airlines; right?

11 A. Correct.

12 THE COURT: Well, you say "supposed to be." You
13 were, weren't you?

14 THE WITNESS: We are.

15 THE COURT: Yeah.

16 Q. To be clear, has JetBlue provided consent to Spirit for
17 the incremental aircraft request?

18 A. No, we did not.

19 Q. And JetBlue communicated to Spirit that it was denying
20 the incremental aircraft request; right?

21 A. There was no formal response back to Spirit.

22 Q. Well, earlier you referenced the working team making a
23 communication to Spirit; right?

24 A. At the working-team level, yes. A formal response
25 would be from someone like our general counsel. And there

1 was no formal response from our general counsel or myself
2 back to Spirit on this ask. And we never heard about it
3 since.

4 Q. Formal or informal, did JetBlue tell Spirit it was
5 denying the incremental aircraft request?

6 A. At the working-team level, which is informal, the teams
7 communicated that we would most likely deny this request
8 because we didn't believe it was appropriate at this point
9 in time to be sourcing aircraft two and a half years out.

10 Q. And did Mr. Klinka tell you in advance of his
11 communication with Spirit that he would be communicating to
12 Spirit that JetBlue was going to deny the request?

13 A. The working teams work fluidly. I don't recall there
14 being a specific point in time where Derek told me that he
15 was going to do that. But from what I understand, and from
16 what I recall, that that did occur. But, again, there was
17 no formal response back to Spirit. And, again, Spirit never
18 brought it up again.

19 Q. Mr. Klinka and Ms. Habachy have the authority to
20 consent to an IOC request; right?

21 A. They do.

22 Q. And after Mr. Klinka told you that he had communicated
23 JetBlue's -- had made that communication to JetBlue, you did
24 not take any steps to undo what he did; right?

25 A. No.

1 Q. So let's turn to Exhibit 425 in your binder. And let's
2 actually just turn to JetBlue's disclosure schedule in
3 this -- well, actually, sorry. Let me take a step back.

4 If you take a look at the first page of this e-mail
5 from Ms. Habachy, you're copied on it; right?

6 A. Correct.

7 Q. And if you look at the list of the attachments here, it
8 shows the first attachment is the merger agreement; right?

9 A. Correct.

10 Q. And the second attachment is called, "Exchange - Parent
11 Disclosure Schedule (Final Version.)" Right?

12 A. Yes.

13 Q. And that's a reference to JetBlue's disclosure schedule
14 to this deal; right?

15 A. Correct.

16 Q. Okay. So why don't we just turn to section 5.1 of the
17 merger agreement, which is called, "Conduct of Business by
18 the Company Pending the Closing," and it begins at the page
19 ending in 7670. And this is article 5 of the merger
20 agreement, and below that is a paragraph called 5.1.

21 Section 5.1 governs the IOC consent process that we've been
22 discussing; right?

23 A. Correct.

24 Q. And section 5.1 is pretty long, but I want to direct
25 your attention to the last paragraph which is on page 7676.

1 And so take a look at the first sentence of that last
2 paragraph beginning with, "Notwithstanding." This
3 defines -- this has a defined term of "parent consent
4 persons." Right?

5 A. Correct.

6 Q. So the merger agreement specifies there are only
7 certain individuals at JetBlue who can provide consent for
8 an IOC request; right?

9 A. Correct.

10 Q. And those individuals are listed in section 5.1 of
11 JetBlue's disclosure schedule; right?

12 A. Yes.

13 Q. All right. So now let's take a look at JetBlue's
14 disclosure schedule which begins at the page ending in the
15 Bates number 7745. And once you're there, I'd like to
16 actually go to page 7749, which has section 5.1. And this
17 version has been redacted at the request of defense counsel.
18 These are the parent consent persons that we were just
19 discussing; right?

20 A. Correct.

21 Q. You're listed there?

22 A. I am.

23 Q. And so is Mr. Nelson?

24 A. Yes.

25 Q. And Mr. Klinka is listed here too; right?

1 A. Correct.

2 Q. And so is Ms. Habachy?

3 A. Yes.

4 Q. And you describe Ms. Habachy and Mr. Klinka as being on
5 the working-team level; right?

6 A. Correct.

7 Q. And so it's your understanding that Mr. Klinka and
8 Ms. Habachy can consent on behalf of JetBlue to an IOC
9 request; right?

10 A. For this contract, yes. But in reality what we do is
11 Brandon and I work with the working team to arrive at an
12 assessment of any IOC requests, and we collaboratively come
13 up with a plan as to how we're going to respond to Spirit.
14 So that's how it actually plays out.

15 Q. And Mr. Klinka and Ms. Habachy are the ones who told
16 Spirit that JetBlue did not support adding incremental
17 aircraft into its fleet as of November 2022; right?

18 MR. SHORES: Objection, mischaracterizes
19 testimony.

20 MS. MARKEL: I can rephrase, your Honor.

21 THE COURT: I'll take that as a willingness to do
22 so. Go ahead.

23 Q. Did Mr. Klinka and Ms. Habachy tell Spirit that JetBlue
24 did not support adding incremental aircraft into its fleet
25 plan as of November 2022?

1 A. So I believe they went back and communicated that we
2 would most likely deny the IOC request to add aircraft.

3 THE COURT: And as I get your testimony, at that
4 point the back-and-forth about that issue petered out?

5 THE WITNESS: Correct.

6 Q. Okay. You can put this exhibit aside.

7 I want to return to the topic of Spirit's options to
8 acquire aircraft from Airbus. And I'd like to first focus
9 on July 2022. That's when the merger agreement was
10 executed; right?

11 A. Correct.

12 Q. And as of July 2022, you were aware that Spirit had, I
13 would say, some number of Airbus options for aircraft to be
14 delivered in the first quarter of 2026; right?

15 MR. COHEN: Your Honor, just to clarify, this is
16 the only second number that is subject to the
17 confidentiality issue.

18 THE COURT: All right. So now this is another
19 number. And it is -- say again what you were asking about
20 before he spoke?

21 MS. MARKEL: Of course. I understand this is not
22 the only number that is subject to confidentiality issues.

23 THE COURT: Well, all right. But for this, what
24 is it?

25 MS. MARKEL: Yes. This is the number of Airbus

1 options that Spirit had for aircraft to be delivered in the
2 first quarter of 2026.

3 THE COURT: Understood.

4 MS. MARKEL: Okay.

5 Q. And so, Ms. Hurley, as of July 2022, you were aware
6 that Spirit had a number of Airbus options for aircraft to
7 be delivered in the first quarter of 2026; right?

8 A. Just -- can you clarify what type of aircraft you're
9 talking about?

10 Q. Well --

11 THE COURT: Well, let's start from the general. I
12 mean --

13 THE WITNESS: I mean, I'm not sure if she's
14 talking about options or if you're talking about firm
15 aircraft.

16 THE COURT: No, she's talking about -- the
17 question, anyway, was options.

18 THE WITNESS: Okay.

19 THE COURT: Options from Airbus.

20 THE WITNESS: Yes.

21 THE COURT: And you understood how many they had?

22 THE WITNESS: I did.

23 THE COURT: Go ahead, Ms. Markel.

24 Q. And you also knew what Spirit's notification period was
25 for those options --

1 THE COURT: Well, we've been over that. She does.

2 MS. MARKEL: Okay.

3 Q. It was your understanding then that Spirit had to make
4 a decision whether to exercise those options by --

5 THE COURT: A certain date.

6 Q. -- a certain date; right?

7 A. Correct.

8 THE COURT: That's what the contract says.

9 MR. SHORES: Your Honor, we're going over -- I'm
10 sorry.

11 THE COURT: Yeah, we have been all over this.
12 Except now, now we -- the number of aircraft is confidential
13 and I'll respect that to the extent I can.

14 MS. MARKEL: Okay.

15 Q. So was it your view -- we previously discussed the 21
16 aircraft for 2025. I'm now talking about 2026. It was your
17 view that Spirit should not convert any of its options -- or
18 let me -- yeah. Let me start over. Did JetBlue communicate
19 to Spirit its view that Spirit should not convert any of its
20 options in advance of the notification date?

21 MR. SHORES: Objection, asked and answered.

22 THE COURT: No, overruled. Overruled. That's a
23 little different.

24 A. So as part of the request that Spirit had in November
25 of 2022, there was the 21 aircraft in 2025, which were going

1 to be leases, and then the 2026 aircraft that they were
2 requesting, those could have been converting options to
3 firm. At that point in time, from a contractual
4 perspective, we had time. We didn't have to do that in
5 November of 2022. So that is why specifically I said at
6 this point in time we don't have to do that.

7 I -- I, you know, I mentioned earlier, I manage our
8 fleet plan through the lens of flexibility. And a lot can
9 change very, very quickly in our industry. So specific to
10 those options in 2026, we had time to make that decision and
11 so we did not need to make that decision in November of
12 2022.

13 Q. Okay. And understanding that we're not saying the
14 notification date for those 2026 Q1 options, the
15 notification date has since passed; right?

16 A. Well, to be totally frank, much of this discussion,
17 from my perspective, is moot. What has happened since we
18 signed the merger agreement, and since November of 2022,
19 when Spirit was asking us for additional aircraft, Spirit on
20 their own has actually deferred aircraft.

21 Q. Ms. Hurley, I will come back to that, but my question
22 was very simple: Has the notification date for those
23 options passed?

24 MR. SHORES: Objection, asked and answered.

25 THE COURT: Sustained. Sustained.

1 MS. MARKEL: Okay.

2 Q. So Spirit did not come back to JetBlue with another
3 request to convert options at the time of the notification
4 date; right?

5 A. The next time that Spirit came back to JetBlue with an
6 aircraft request was, quite frankly, the deferral. And as
7 part of the deferral that they did in August of 2023, they
8 shifted their options to the right. So, again, we have more
9 time to make that decision because now the options have
10 moved further to the right.

11 THE COURT: When you say "moved further to the
12 right," that means to the deferral state?

13 THE WITNESS: Correct.

14 THE COURT: All right.

15 Q. So, Ms. Hurley, Spirit came to JetBlue with a request
16 for JetBlue's consent to amend its Airbus contract; right?

17 A. Correct.

18 Q. And at that point in time JetBlue consented to that
19 request; right?

20 A. Correct.

21 Q. And that was exactly the outcome that JetBlue had
22 wanted; right?

23 A. At the end of the day, we want to make sure we're
24 purchasing a viable entity when this transaction financially
25 closes. So if Spirit believed that they needed to defer

1 aircraft in order to set themselves up financially, and from
2 a viability perspective, logically, JetBlue was going to
3 approve the request.

4 Q. And you had told Spirit that you had no interest in
5 more aircraft back in July of 2022; right?

6 A. Correct.

7 Q. And you told your team to reiterate that position to
8 Spirit in November 2022; right?

9 MR. SHORES: Objection, asked and answered.

10 THE COURT: Yeah, sustained. On that ground. And
11 now that this is moot I'm not at all clear as to the
12 relevance of this. I'm dealing with -- and I think it's
13 appropriate to say this -- I'm dealing with this not as a
14 historic event, but as the situation exists today and may
15 exist in the future. That's enough to say. Go ahead,
16 Ms. Markel.

17 Q. Ms. Hurley, does Spirit have any options to acquire
18 aircraft from -- from Airbus for 2026 at this point in time?

19 MR. SHORES: Your Honor, I'm going to object as
20 asked and answered. We're going back over the same --

21 THE COURT: No, if they do at this time. She may
22 answer.

23 A. Yes, Spirit has a firm order book with Airbus where
24 they'll be taking aircraft in the 2026 time frame.

25 Q. I'm sorry. What was that?

1 A. Yes. The answer is yes.

2 THE COURT: They have a firm order book whereby
3 they will be taking aircraft in 2026.

4 Q. My question was whether Spirit has any options to
5 acquire aircraft from Airbus for 2026?

6 A. I believe that the options begin in 2027, if I'm not
7 mistaken. Again, that was the deferral that just occurred.
8 So not only did Spirit defer firm aircraft, but they
9 deferred their option aircraft as well.

10 Q. Ms. Hurley, if this deal goes through, JetBlue is
11 expecting that it will close by July 2024; right?

12 A. That is our hope, yes.

13 Q. And Spirit does not have -- well, my question is what
14 is the earliest -- this is hard to kind of dance around, but
15 what is the earliest notification date for Spirit as of this
16 time?

17 THE COURT: Well, you can figure that. She says
18 that they have options in -- to -- for aircraft in 2027.
19 You can count that back.

20 MS. MARKEL: Okay.

21 Q. So if this deal were to close, Ms. Hurley, by
22 July 2024, JetBlue would control all the options; right?

23 A. Correct.

24 Q. And JetBlue could decline to exercise all of Spirit's
25 options at that time; right?

1 A. Just to be clear, an option is utilized throughout the
2 industry. So JetBlue and Spirit aren't the only ones that
3 have aircraft options. And they are just that. So it
4 allows an airline to assess the economic backdrop and the
5 supply-and-demand dynamics at a point in time. And we will
6 make the appropriate decision whether we want to add
7 incremental growth by converting that option to firm.

8 Q. Okay. And let's briefly discuss what was going on when
9 Spirit came to JetBlue for consent to amend its contract
10 with Airbus more recently. By that point in time, you had
11 already been deposed in this case; right?

12 A. Correct.

13 Q. And you were questioned about the November 2022 IOC
14 request; right?

15 A. Correct.

16 Q. And you were aware that other witnesses were deposed on
17 that same issue; right?

18 A. I'll take your word for it.

19 Q. Okay.

20 MR. SHORES: Your Honor, I'm going to object to
21 the relevance of this. I mean, we've already established --

22 THE COURT: Wait -- well, that objection is not
23 timely, but I am wondering why it's relevant. Go ahead.

24 MS. MARKEL: I can move on to the next topic.

25 THE COURT: All right.

1 Q. I'd like to briefly discuss JetBlue's and Spirit's
2 recent financials. As the CFO of JetBlue, and in light of
3 this deal, do you review Spirit's recent financial
4 statements?

5 A. What's publicly available, yes.

6 Q. Okay. Are you aware that Spirit had a net loss for
7 this most recent quarter?

8 A. I am aware.

9 Q. And JetBlue also failed to make a profit for the most
10 recent quarter; right?

11 A. Correct.

12 Q. JetBlue actually had a net loss of over \$150 million
13 for the third quarter of this year; right?

14 A. Correct.

15 Q. Are you aware that Spirit had a net loss the first
16 quarter of 2023?

17 A. Yes.

18 Q. And JetBlue did not make a profit in the first quarter
19 of 2023 either; right?

20 A. Correct.

21 Q. You had a net loss of about \$192 million; right?

22 A. Correct.

23 Q. Are you aware that Spirit had a net loss for 2022?

24 A. Yes.

25 Q. JetBlue did not make a profit in 2022 either; right?

1 A. Correct.

2 Q. Net loss of about \$362 million?

3 A. Yes.

4 Q. Are you aware that Spirit had a net loss for 2021?

5 A. Yes.

6 Q. JetBlue did not make a profit in 2021; right?

7 A. Correct.

8 Q. Had a net loss of about \$182 million; right?

9 A. Yes.

10 Q. JetBlue typically targets a mid to high single-digit
11 growth rate; right?

12 A. Historically, yes.

13 Q. And you're aware that Spirit has historically targeted
14 a mid-teens growth rate; right?

15 A. Correct.

16 Q. So Spirit's growth rate has historically been higher
17 than JetBlue's; right?

18 A. Yes.

19 Q. And JetBlue is expecting its capacity to decrease for
20 the first quarter of 2024 year-over-year; right?

21 A. Correct.

22 Q. And JetBlue is expecting that it will have much lower
23 growth profile for this upcoming year; right?

24 A. Yes, given industry constraints.

25 Q. And those industry constraints include the

1 Pratt & Whitney engine issues and aircraft delivery delays;
2 right?

3 A. Correct.

4 Q. And JetBlue is dealing with its own aircraft delivery
5 delays, right, from Airbus?

6 A. Correct.

7 Q. And you're aware that Spirit is too?

8 A. Yes.

9 Q. And both JetBlue and Spirit fly A321s; right?

10 A. Correct.

11 Q. And so both JetBlue and Spirit are affected by the
12 Pratt & Whitney GTF engine issues; right?

13 A. Correct.

14 Q. You're aware that some of Spirit's A321s will have to
15 be grounded this year due to Pratt & Whitney's GTF issues;
16 right?

17 A. Correct.

18 Q. And some of JetBlue's A321s will also have to be
19 grounded this year due to Pratt & Whitney GTF issues; right?

20 A. Yes.

21 Q. And that number of grounded aircraft will increase for
22 JetBlue next year; right?

23 A. Correct.

24 Q. And JetBlue is in discussion with Pratt & Whitney to
25 compensate JetBlue for the impact of the GTF engine issues;

1 right?

2 A. Correct.

3 Q. Are you aware that Spirit also expects to receive
4 compensation from Pratt & Whitney for the GTF engine issues?

5 A. Pratt & Whitney has publicly said that they're going to
6 do right by their customers, so I could assume that Spirit
7 is having discussions as well.

8 Q. So JetBlue still wants this deal to go through; right?

9 A. Yes.

10 Q. Even despite Spirit's Pratt & Whitney engine troubles;
11 right?

12 MR. SHORES: Objection, asked and answered.

13 A. Correct.

14 THE COURT: Well, she answered it.

15 Q. Well, JetBlue would be taking over those Spirit planes
16 with engine issues; right?

17 A. Correct.

18 Q. And how much debt does JetBlue have to take on to
19 finance this deal?

20 A. So we're planning to raise approximately \$3.5 billion
21 in debt to support the purchase of Spirit.

22 Q. The merger agreement has a section on conditions to
23 closing; right?

24 A. Correct.

25 Q. One closing condition is that Spirit's business will

1 not have had a material adverse effect; right?

2 A. Correct.

3 Q. As CFO, it's your business understanding that if
4 Spirit's business has suffered a material adverse effect
5 then JetBlue doesn't have to close the deal; right?

6 MR. SHORES: Objection, your Honor. Relevance?

7 THE COURT: Why is that relevant?

8 MS. MARKEL: The defendants have put at issue
9 Spirit's financial performances and --

10 THE COURT: But you're trying to stop the deal.
11 If they don't want the deal, you could settle it. That's
12 not for me to speak to. I sustain the objection.

13 Q. Well, despite Spirit's Pratt & Whitney engine issues,
14 has JetBlue notified Spirit that it believes there has been
15 a material adverse effect on Spirit's business?

16 MR. SHORES: Objection, same --

17 THE COURT: Has JetBlue notified Spirit. I'll let
18 you have that.

19 MS. MARKEL: Thank you.

20 THE COURT: You're about through, I take it?

21 MS. MARKEL: This is it.

22 MR. SHORES: Your Honor --

23 THE COURT: All right, this is it. You may answer
24 that question.

25 A. No, we have not.

1 THE COURT: Thank you. Mr. Shores, do you wish to
2 inquire?

3 MR. SHORES: I would like to inquire, your Honor.
4 May I have a moment just to get organized?

5 THE COURT: Of course.

6 MR. SHORES: Thank you very much.

7 May I proceed, your Honor?

8 THE COURT: You may.

9 CROSS-EXAMINATION

10 BY MR. SHORES:

11 Q. Good afternoon, Ms. Hurley.

12 A. Good afternoon.

13 Q. Ms. Hurley, how long have you worked at JetBlue?

14 A. Just over 19 years.

15 Q. And has that been your entire career?

16 A. My entire career, yes.

17 Q. And you are currently the chief financial officer of
18 JetBlue; is that right?

19 A. I am.

20 Q. And what positions did you have before becoming chief
21 financial officer?

22 A. I've moved around the finance organization a handful of
23 times: accounting, financial planning analysis, fleet,
24 treasury, procurement.

25 Q. And you mentioned fleet. How long have you been

1 involved in fleet issues for JetBlue?

2 A. I've been leading the fleet team for probably over ten
3 years.

4 Q. Ten years?

5 A. Ten years.

6 Q. Thank you. Ms. Hurley, what role did you play in the
7 events leading up to the consummation of the JetBlue-Spirit
8 merger agreement in July of 2022?

9 A. Yeah. So I was a big supporter of the transaction and,
10 obviously, oversaw the financial analysis that occurred to
11 help justify the deal. I also was a public face in engaging
12 with investors as well.

13 Q. And as chief financial officer of JetBlue, were you in
14 favor of pursuing this deal?

15 A. I was in favor. I believe this is a transformational
16 opportunity for JetBlue to become a national competitor.

17 Q. And, Ms. Hurley, I want to talk a little bit about the
18 managing of JetBlue's fleet. So, in general, what
19 principles do you apply in the management of JetBlue's
20 fleet?

21 A. So my team works hand in hand with the network team.
22 So we define, you know, the network opportunities that
23 exist, and we ensure that the fleet plan actually aligns and
24 can deliver on that network strategy. We look through the
25 lens of flexibility as well. You know, we live in an

1 ever-dynamic industry and sector and things can change on a
2 dime. And so building in any flexibility to our fleet
3 planning is very beneficial.

4 Q. Okay. And are you familiar with the term "fleet
5 commonality"?

6 A. I am.

7 Q. And what does that mean?

8 A. Yeah. So fleet commonality is operating one fleet
9 type. So today we fly the Airbus fleet as well as the E190.
10 We're retiring the E190, so we will have fleet commonality
11 once we retire the E190.

12 Q. And "engine commonality," you're familiar with that
13 term?

14 A. Correct.

15 Q. And what is that?

16 A. Yeah, operating the same type of engines. I mean, when
17 you operate common engines or aircraft, there are
18 efficiencies that can be gained, whether it's procuring
19 parts, whether it's training. And so there's a benefit, a
20 financial benefit and efficiency to engine and aircraft
21 commonality.

22 Q. And did aircraft and engine commonality play any role
23 in your decision to pursue the Spirit transaction?

24 A. It did. It was very, very attractive that Spirit flies
25 in an all-Airbus fleet as well as operates the same

1 Pratt & Whitney engine type.

2 Q. And what would be the outcome of this commonality for
3 you from a cost perspective?

4 A. Yeah. Again, efficiencies from a training, from a
5 safety perspective, from a procurement perspective. These
6 are all cost efficiencies or benefits by having a single
7 fleet type.

8 Q. Ms. Hurley, how many planes are in JetBlue's fleet
9 today?

10 A. So as of today we have 296.

11 Q. Okay. And how does that fleet size compare to, say,
12 ten years ago?

13 A. Yeah. So ten years ago we probably had about 195
14 aircraft.

15 Q. So you've roughly grown, if I'm doing the math
16 correctly, about ten planes per year. Does that sound
17 right?

18 A. Correct.

19 Q. And without a transaction would JetBlue be able to
20 continue to grow its fleet?

21 A. Yes, but not at scale.

22 Q. And what do you mean by not at scale?

23 A. Yeah, not in large quantities because there are
24 constraints in the industry in terms of getting your hands
25 on aircraft. This is a transformational; overnight we have

1 access to 200 more aircraft.

2 Q. And by the end of 2027, if there's no transaction,
3 approximately how many planes would you estimate would be in
4 JetBlue's fleet?

5 A. No transaction, we'll probably have about 335
6 airplanes.

7 Q. So roughly 40 more airplanes; is that about right?

8 A. Yes.

9 Q. And does that account for any delivery delay that may
10 occur in the industry?

11 A. Correct.

12 Q. Okay. So you would anticipate receiving that number
13 including accounting for any delivery delay?

14 A. Correct.

15 Q. And what about retirements? Does JetBlue have to
16 retire fleet?

17 A. We do.

18 Q. And why does JetBlue retire aircraft?

19 A. Yeah, we retire aircraft because they get to an age
20 where it's more expensive to invest in them and operate
21 them. And also there is next-generation technology in terms
22 of aircraft and engines that can provide a company cost
23 efficiencies, fuel savings. And so those are two of the
24 main reasons that we retire aircraft.

25 Q. And, Ms. Hurley, if this transaction was allowed to

1 close next year, how many planes would be in JetBlue's
2 fleet?

3 A. Yeah. So overnight we go to 500 aircraft.

4 Q. Okay. And if this transaction, again, was allowed to
5 proceed, how many planes would be in JetBlue's aircraft --
6 I'm sorry, JetBlue's fleet by the end of 2027?

7 A. We'll have just over 600 aircraft.

8 Q. Okay. And you mentioned that there are options built
9 in to the transaction that you'd also receive; is that
10 right?

11 A. Correct.

12 Q. Do you have approximately how many options would
13 JetBlue obtain as a part of this transaction? And I mean
14 collectively between JetBlue and Spirit?

15 A. Sure. It's between 60 and 70 aircraft.

16 Q. And you were asked some questions about exercising
17 options. Have you made any decisions about exercising those
18 options today?

19 A. We have not because we still have time to make that
20 decision.

21 Q. And why is that important, Ms. Hurley?

22 A. Well, I think that's really important because, as I
23 mentioned earlier, I value fleet flexibility. And we will
24 wait until the contractual time frame that we have to make
25 that decision and assess the market opportunities at that

1 point in time.

2 Q. And, to your knowledge, sitting here today, has JetBlue
3 ever not exercised an option?

4 A. I don't recall not exercising options.

5 Q. Other than planes, what other assets is JetBlue
6 acquiring as part of this transaction?

7 A. Yeah. We're looking forward to also acquiring Spirit's
8 team members. Specifically, their pilots will be very
9 beneficial to continue to operate their 200 aircraft that we
10 will take on overnight. Also, the infrastructure across the
11 country, and having more gates and slots at airports that
12 JetBlue isn't at today or that we don't have scale at today.

13 Q. All right. And, Ms. Hurley, after this transaction, do
14 you have an understanding of what JetBlue's fleet size will
15 be compared to your big four competitors, if you understand
16 what I mean by that term?

17 A. We do. So just to put it in reference, of the top four
18 largest carriers, the smallest one has just over 800
19 aircraft.

20 THE COURT: And that would be Southwest?

21 THE WITNESS: That would be Southwest.

22 A. And then the others in that category have over a
23 thousand aircraft.

24 Q. And do you have an understanding of whether those other
25 in the big four, are they growing as well?

1 A. They are growing. So many of them have actually placed
2 recent orders. So Southwest actually came out in October
3 and placed a 100-aircraft order. United is taking 800
4 airplanes over the next nine years. Delta, last July,
5 actually placed an order for 100 aircraft. So they are all
6 going to continue to grow.

7 Q. And from a CFO perspective, Ms. Hurley, how is
8 JetBlue's growth achieved from this merger going to impact
9 the business for JetBlue?

10 A. Yeah. It gives us scalability. Right? It allows us
11 to be a national competitor against these four carriers, and
12 it closes the gap overnight in terms of size. We're still
13 going to be small. Right? But it allows us a platform
14 where we can better compete over time.

15 Q. And you mentioned volatility in the industry several
16 times. How does growth for JetBlue impact that volatile
17 environment that you've discussed?

18 A. Yeah, the larger you are, the better you can navigate
19 through impacts to the business and volatility. Right? The
20 more opportunity you have in size and scale, you can weather
21 shocks to the system better than we can today because we are
22 of a smaller scale.

23 Q. And is the airline industry one that's experienced
24 shocks?

25 A. Yes. Very much so. You think of 9/11, you think of

1 COVID. Just the overarching oil environment. Those are
2 the -- those are some of the volatility aspects that we have
3 to deal with.

4 I'll use New York as a good example. 50 percent of
5 JetBlue's network today is exposed to New York, and we
6 severely were impacted by the weather and air traffic
7 control constraints this summer, which was one of the big
8 reasons we didn't actually make money in the third quarter.
9 And so diversifying our network and our geography can better
10 set JetBlue up to compete and weather any shocks to the
11 system.

12 Q. Okay. And I'm going to come back to the third quarter,
13 which the government's counsel also raised. What about from
14 a consumer perspective? How do you view JetBlue's growth
15 impacting consumers?

16 A. Yeah, I mean, we want to bring more JetBlue to more
17 consumers across the country. I mean, we pride ourselves on
18 offering an enhanced customer service and product at a
19 competitive fare. And we've shown very effectively that we
20 can do that against the legacies.

21 Q. Ms. Hurley, I want to turn to those third quarter
22 results that the government's counsel asked you about. So
23 did JetBlue make money in the third quarter of 2023?

24 A. We did not.

25 Q. And did you study the performance of other carriers in

1 the industry?

2 A. We did.

3 Q. Okay. And was JetBlue alone in not making money?

4 A. No.

5 Q. Did anybody make money?

6 A. There were others that made money. Most of the
7 legacies made money. I mean, you look at United and Delta
8 and they produced a pretax profit of over \$1.5 billion in
9 the third quarter.

10 Q. 1.5 billion?

11 A. Yes.

12 Q. Okay. And do you have an understanding of how these
13 legacy carriers were able to make \$1.5 billion while JetBlue
14 lost money in the third quarter of 2023?

15 MS. MARKEL: Objection, foundation.

16 THE COURT: Well, I think she's sufficiently
17 qualified to give us her view.

18 I understand American is not doing all that well.
19 So you class them as one of those legacy carriers. But your
20 testimony is United and Delta made this \$1.5 billion,
21 American not so much. Is that right?

22 THE WITNESS: That's right. They didn't do as
23 well as United and Delta in the third quarter. Southwest
24 did make money in the third quarter.

25 THE COURT: And now, Mr. Shores, put your question

1 again.

2 MR. SHORES: Will do, your Honor.

3 Q. Do you have an understanding of how United and Delta
4 were able to make over \$1.5 billion in income while JetBlue
5 lost money?

6 A. Yeah. The legacies, in general, have diversified
7 networks and they're very good at attracting very different
8 types of customers based on their product offering. They,
9 because of the breadth of their networks, they can
10 capitalize on certain regions in terms of customer and
11 demand outperforming, versus others. And they also have
12 really, really strong loyalty programs which generate a
13 meaningful amount of cash for those airlines.

14 So at a high level they have scale, they have size,
15 they have customer diversification, and then they have these
16 ancillary-type programs that deliver for them.

17 Q. And what about from a cost perspective? What is -- do
18 you have an understanding from a cost perspective how
19 they've been able to achieve these results consistent with
20 the cost basis that they have?

21 A. Yeah. Listen, just because of the size and scale that
22 they have, their cost structures, they are good. They have
23 negotiating power with business partners. Right? And they
24 can spread their costs, just given their size and scale, on
25 a unit-cost basis. So they have the ability to scale better

1 than some of us smaller airlines.

2 Q. And how do these Q3 results impact your view of this
3 transaction with Spirit?

4 A. Yeah. I viewed the Spirit transaction as a way for us
5 to better compete against these four carriers. I think it
6 highlights exactly the benefits that we need. We need size,
7 we need scale, we need diversification of geographies, we
8 need to be able to grow, continue to grow a very efficient
9 cost base so that we can maintain that benefit against the
10 legacies. So this transaction is even more prevalent and
11 prominent and really, really important to JetBlue.

12 Q. You mentioned loyalty programs. Can you give us a
13 sense, Ms. Hurley, how those programs have impacted
14 competition in 2023?

15 A. Yeah. Airline loyalty programs generate a lot of -- a
16 meaningful amount of cash for airlines. And loyalty-program
17 growth is really driven by customer relevance, right, and
18 the credit card programs that we, us airlines, have. And
19 you can only become more relevant to customers the more you
20 fly and the more diversification you have to drive customers
21 into these programs. So it's a huge cash generation for
22 airlines.

23 Q. And for the loyalty programs, is there cash generated
24 from credit cards that are associated with those?

25 A. Correct. The credit card programs are the most

1 meaningful part of loyalty programs.

2 Q. And do you track the amount of money that your
3 competitors make from these programs?

4 A. We do.

5 THE COURT: How? How do you do that?

6 THE WITNESS: Many of us are very public about how
7 well our loyalty programs are actually performing.

8 THE COURT: So you look at their announced --

9 THE WITNESS: Correct. Correct.

10 THE COURT: Excuse me, Mr. Shores.

11 MR. SHORES: Of course, your Honor.

12 Q. And, Ms. Hurley, do you have an understanding of
13 Delta's revenues from their loyalty program?

14 A. So Delta just, in their earnings release a few weeks
15 ago, said that they're on track to deliver \$7 billion this
16 year through their loyalty program.

17 Q. And how does that compare to JetBlue?

18 A. So that compares to JetBlue, we are on track to
19 generate close to a billion dollars this year.

20 Q. And revenues from loyalty programs, are they used to
21 cross-subsidize the business of flying?

22 A. They are. They're such cash generators that we
23 continue -- we would continue to invest in the customer
24 experience. I'll give you a good example. Legacies, they
25 actually have a lot of lounges throughout their networks,

1 right, that are for loyalty-type customers. Someone like
2 JetBlue, we do not yet have a lounge because our loyalty
3 program hasn't gotten to the size and scale that we think it
4 can, especially through the light of this transaction.

5 Q. And, Ms. Hurley, could you just describe JetBlue's
6 loyalty program for the Court?

7 A. Sure. So our loyalty program, we reward people even to
8 spend very little. I know that sounds funny, but our
9 tiering system is all about the dollars that people spend in
10 the JetBlue ecosystem, whether it's on a flight, whether
11 it's buying their groceries on our credit card, or whether
12 it's buying hotels and rental cars through JetBlue.

13 So we create these tiers, and you can accumulate what
14 are called tiles. And you can then use those tiles to
15 actually purchase perks. So whether it's getting a free
16 beer or wine on your flight, or whether it's boarding early,
17 or whether it's getting upgraded to our business-class
18 product. So we value customers spending any dollar with
19 JetBlue and we reward them for that.

20 Q. And how would you compare JetBlue's program to, say,
21 the legacy program?

22 A. Yeah. We reward people more quickly, and we want them
23 to continue to spend within the JetBlue ecosystem.

24 Q. And do you aim to take customers from legacy carriers'
25 loyalty programs?

1 A. Of course.

2 Q. And does that happen?

3 A. It does happen. We actually, recently there was one of
4 the legacy airlines who made changes to their loyalty
5 program that was not well-received by their current
6 loyalists. And so we actually took the opportunity to see
7 if we could convert some of those legacy airline loyalists
8 over to JetBlue, and we were actually pretty successful in
9 doing so. And, again, that's because we reward people more
10 quickly.

11 Q. And what was the reaction of the legacy airline in that
12 instance, Ms. Hurley?

13 A. They actually rolled back some of the changes that they
14 had actually made to their loyalty program.

15 THE COURT: Who are we talking about?

16 THE WITNESS: Delta.

17 THE COURT: Thank you.

18 Q. Ms. Hurley, would JetBlue be able to expand its loyalty
19 program if this transaction were approved?

20 A. Yeah. Again, I mentioned earlier, loyalty is all about
21 relevance and how do you become more relevant to more
22 customers. And so us gaining access to more aircraft so
23 that we can fly to more cities and serve more customers is
24 naturally an opportunity for us to continue to grow our
25 loyalty program.

1 Q. What do you think the impact on consumers would be if
2 you're able to do that, Ms. Hurley?

3 A. Exceptionally positive. I mean, we've shown
4 historically, right, through the JetBlue Effect that we
5 bring consumer benefit across the board when we enter
6 markets and go head-to-head against these legacy airlines.

7 Q. Thank you, Ms. Hurley. I'm going to change topics.
8 You were asked by the government's counsel about debt that
9 JetBlue is taking on in order to finance this transaction.
10 Do you recall that testimony?

11 A. I do.

12 Q. Okay. Just as a background matter, can you describe
13 your philosophy to managing JetBlue from a financial
14 perspective?

15 A. Sure. So we have historically managed our debt level
16 and our liquidity level very conservatively. So heading
17 into COVID we had the second strongest balance sheet in the
18 industry. And so that allowed us to navigate through COVID
19 successfully. And, quite frankly, the strength of our
20 balance sheet is what is putting us in a position here today
21 to be purchasing Spirit.

22 Q. Okay. And I'd like to take a look at a document. It's
23 the document that's in evidence as 649. And it's in your
24 binder, Ms. Hurley. Let's see what tab it is. I apologize.
25 It's the third tab in your binder.

1 (On screen.)

2 Q. Do you recognize this document, Ms. Hurley?

3 A. I do.

4 Q. And what is this document?

5 A. This is the presentation that we made on October 31st
6 as part of our earnings release.

7 Q. Okay. And could you turn with me to slide 11, which
8 has the Bates number ending in 1606?

9 A. Yes.

10 Q. And on the right-hand side there's a bullet that says,
11 "Balance sheet remains among the strongest in the industry."
12 Do you see that, Ms. Hurley?

13 A. Yes.

14 Q. What does that mean?

15 A. That means that we have a healthy mix of cash and debt
16 and assets that don't have any financing on them.

17 Q. And if you look to the left, there's a chart and it
18 says, "Adjusted Debt to Capital." Do you see that,
19 Ms. Hurley?

20 A. Yes.

21 Q. And what does "Adjusted Debt to Capital" mean?

22 A. It's essentially the amount of debt that you put on
23 your books to support, quite frankly, buying airplanes.
24 Right? So 50 percent, roughly, of our asset base has
25 financing on it.

1 Q. How does your debt-to-cap ratio, as reflected in this
2 chart, compare to the industry as a whole?

3 A. We are third in line.

4 Q. And after -- third in line, Ms. Hurley?

5 A. Just to be clear, it's good to be on the left side of
6 this chart. So we actually were at 56 percent, and Alaska
7 and Southwest are to the left of us.

8 Q. And you'll have to take on additional debt as part of
9 this transaction, is that right, Ms. Hurley? That was your
10 testimony?

11 A. We will.

12 Q. And what will that do to your debt-to-cap ratio?

13 A. Yeah, that will move us up towards the legacy level in
14 terms of percentage of debt to cap.

15 Q. And did you support taking on additional debt as part
16 of this transaction?

17 A. I did.

18 Q. And why is that?

19 A. Because this is a generational opportunity to transform
20 JetBlue, and JetBlue's future. So I'm a big believer that
21 the short-term risk of increasing the amount of debt on your
22 balance sheet is going to be worth it in the long run.

23 Q. And was there a risk of not acting on this transaction,
24 Ms. Hurley?

25 A. Yes. I mean, these merger and acquisition

1 opportunities don't come around very often. And this is an
2 opportunity for us to significantly grow overnight and
3 become a larger competitor. So there was actually probably
4 more risk in not progressing with this acquisition.

5 Q. And does the board of directors have a committee that
6 oversees finance issues, Ms. Hurley?

7 A. We do.

8 Q. And can you just describe that committee to us?

9 A. So a subset of the board is called our finance
10 committee, and we have five members of the board that sit on
11 that committee.

12 Q. And do those members have mergers and acquisitions
13 experience?

14 A. They do.

15 Q. And do they have finance experience?

16 A. They do.

17 Q. And did they support taking on this additional debt as
18 part of this transaction?

19 A. Yes.

20 Q. And, Ms. Hurley, does JetBlue have a plan to decrease
21 that debt over time?

22 A. Of course, yes. I mean, this is a moment in time where
23 we're going to increase our debt, and when we bring these
24 two companies together, the profitability or the money that
25 the combined company makes is going to generate cash and

1 that will allow us, over a period of time, to start paying
2 down this debt.

3 Q. And does part of the strategy for paying down that debt
4 concern management of costs?

5 A. That is one of the levers, yes.

6 Q. Okay. And JetBlue, apart from this transaction, can
7 you describe its cost-management strategy?

8 A. Yeah. So the JetBlue business model was essentially
9 built around having a lower cost structure than the
10 legacies. That allows us to go into markets and effectively
11 compete and keep more money in our pockets. So we have a
12 history of putting in place what we call structural cost
13 programs, which identify initiatives throughout the
14 organization to gain scale and efficiency to take costs out
15 of the business.

16 Q. And can you provide us an example of one of those cost
17 programs?

18 A. Sure. We're actually in one right now. So we've
19 committed to the market that we would take out \$150- to
20 \$200 million in run rate savings by the end of next year.
21 To date here in 2023 we will have achieved \$70 million of
22 that.

23 Q. And is that the first time JetBlue's done a cost,
24 structural cost program?

25 A. No. We have a history of doing these. We actually had

1 a \$300 million structural cost program that was set to wrap
2 up at the end of 2020. We were on track to exceed that, and
3 then obviously COVID hit the industry.

4 Q. Okay. And do you expect to save costs as a result of
5 combining with Spirit in the long run?

6 A. Of course. I mean, we're going to have a larger cost
7 base, and there's definitely efficiencies that can be gained
8 by bringing these two companies together.

9 Q. Okay. And how much in cost savings have you identified
10 to date, if you recall, through the transaction?

11 A. So thus far at a high level we've identified
12 \$325 million.

13 Q. And do you expect to achieve more cost savings than
14 that in the long run?

15 A. I do. This was a very high-level analysis with a
16 limited amount of information at this time. And once we
17 actually purchase Spirit, we'll be able to go through the
18 nth level of detail in terms of how and where they spend
19 their money and identify opportunities.

20 Q. Okay. And are you familiar with the term "cost
21 dyssynergies"?

22 A. Yes.

23 Q. And what are those?

24 A. Well, naturally, we're buying an ultra low-cost
25 carrier. So the largest dyssynergy that we have is bringing

1 Spirit labor rates up to JetBlue labor rates. So that is a
2 dyssynergy that we will see in this specific transaction.

3 Q. Okay. And has that dyssynergy changed over time?

4 A. It has.

5 Q. And how has it changed?

6 A. It -- what has happened in the industry is that pay
7 rates have started to converge, specifically with our pilot
8 groups. And so because our pilot rates are now closer to
9 Spirit's than they were when we entered the transaction last
10 July, that dyssynergy number has come down.

11 Q. Thank you, Ms. Hurley. And from a cost perspective,
12 you maintain a cost gap relative to the legacy airlines; is
13 that right?

14 A. We do.

15 Q. And are you confident after this transaction you'll be
16 able to maintain that cost gap relative to the legacy
17 airlines?

18 A. I do. I do believe that we can do that. I actually
19 spoke to that on an earnings call last year. There are
20 efficiencies that can be gained bringing these two companies
21 together and, again, the JetBlue business model is built
22 around having a lower cost structure than the legacies so
23 that we can enter these markets and be competitive from a
24 fare perspective.

25 Q. All right. Ms. Hurley, I want to change topics and

1 talk about interim operating covenants. And just at a
2 high-level background, can you explain, what is an interim
3 operating covenant?

4 A. And interim operating covenant is essentially a
5 parameter -- predefined parameters whereby which we expected
6 Spirit to operate in as we -- between the time frame of
7 merger-agreement execution and financial close.

8 Q. Okay. And what is the purpose of an interim operating
9 covenant?

10 A. Yeah. At the end of the day we're spending
11 \$3.8 billion to purchase Spirit, and we want to ensure that
12 when we actually financially close, the entity that we're
13 purchasing is still what we thought when we executed the
14 merger agreement.

15 Q. Okay. So if we could go back to Exhibit 425, which I
16 believe the government showed you. And if we could go to
17 the Bates number ending in 7670.

18 (On screen.)

19 THE COURT: 425?

20 THE WITNESS: It's in the last binder.

21 MR. SHORES: It's in the government's binder, your
22 Honor.

23 THE COURT: All right. Fine. Thank you.

24 MR. SHORES: Sure.

25 A. Can you repeat the Bates again, please?

1 Q. Sure. The Bates number ends in 7670.

2 Now, Ms. Hurley, under 5.1, I want to look at the
3 language starting midway down that says, "The company will
4 conduct its operations in the ordinary course of business
5 and use commercially reasonable efforts to preserve
6 substantially intact its business organization." And then
7 there's some other pieces behind that. What is your
8 understanding of the purpose of this provision in the
9 interim operating covenants?

10 MS. MARKEL: Objection, calls for a legal
11 conclusion.

12 THE COURT: Well, he's just asked for her
13 understanding. She may give her understanding.

14 A. My understanding is that, again, we just wanted to make
15 sure that Spirit continued to operate through the lens that
16 they historically had so that we end up with an entity that
17 we expect at financial close.

18 Q. Okay. And let's take a look at the next page, if we
19 could, Ms. Hurley, which is the Bates number ending in 7671.
20 And, Ms. Hurley, I want to focus on the language that says,
21 "The company will not, between the date of this agreement
22 and the effective time, directly or indirectly, do or agree
23 to do or permit any other member of the company group to do
24 any of the following without the prior written consent of
25 the parent." Do you see that language?

1 A. Yes.

2 Q. And then there are some provisions following that as
3 well. What is your understanding of this provision?

4 A. Yeah, if Spirit wanted to do any of these items they
5 would have to come to JetBlue for consent.

6 Q. And why was that important to set out certain items
7 that Spirit would need to come to JetBlue's consent for
8 between the time of signing the agreement and closing?

9 A. Yeah. These items, if you look at them, they're
10 material changes. They could be material changes to the way
11 that Spirit was operating. And, again, we wanted to ensure
12 that the entity that we purchased, or executed the merger
13 agreement in July of '22, was the same entity when we hit
14 financial close.

15 Q. Right. So in this language Spirit, as the company,
16 would have to come to the parent, JetBlue, for consent
17 related to these matters; right?

18 A. Correct.

19 Q. Okay. And let's just take a look at a couple of them
20 so we can put this in context. So on 7671, little A says,
21 "Amend the company charter or company bylaws." Do you see
22 that?

23 A. Correct.

24 Q. Why would Spirit need to come to JetBlue if they wanted
25 to take this action, Ms. Hurley?

1 A. I mean, clearly, if they wanted to amend their bylaws
2 or charter to head in a different direction we would want to
3 be able to consent or deny that. That could materially
4 impact the deal.

5 Q. And let's look at another one. Let's look at section H
6 on 7672. It says, "Enter into any new line of business."
7 Why would Spirit need to come to JetBlue for that type of
8 action?

9 A. Yeah. At the end of the day, what we're purchasing is
10 an airline. If Spirit decides to enter another line of
11 business we would obviously want to be able to consent or
12 deny.

13 Q. Okay. And then let's look at paragraph section W, if
14 we could. That's on the Bates ending in 7675. And this
15 refers to, "Acquire lease or exercise any option to acquire
16 or lease any aircraft." Do you see that, Ms. Hurley?

17 A. Correct.

18 Q. And why did JetBlue negotiate for a consent right
19 related to the acquisition or leasing of additional
20 aircraft?

21 A. It's an expensive asset that costs tens of millions of
22 dollars. And so if they were going to go out and acquire
23 aircraft, we wanted to be able to consent or deny.

24 THE COURT: This is a good place to stop because I
25 need to -- and you may step down, ma'am.

1 (Whereupon the witness stepped down.)

2 THE COURT: I need to do a little management here.

3 And it's this. You've seen me just a moment ago, when we

4 went back to the government's binder, fumble with the

5 binders. So really this is a request or a direction. We've

6 got battalions of binder people here. So now what I want by

7 Monday, I want a binder or binders giving me all the

8 exhibits from number 1 through whatever we're up to today,

9 and we can add to it as we go along. I want no more than

10 two copies of that. And I intend to sit here with the

11 exhibits on the bench. And it's not necessary to put

12 numbered exhibits in the binders that you've already given

13 me because I want to be working with a single binder that

14 I'm going to be working with, and the law clerk as well,

15 soon. So I want such a binder by Monday. And it will be

16 helpful if an exhibit has been marked for identification, if

17 the identification letters are described as well. But

18 that's all. In other words, if 645 was BUY, I just want

19 Exhibit 645/BUY.

20 And I thank you in advance. The way you've

21 presented this, and I've said it before, is very helpful to

22 the Court and I'm appreciative of it.

23 The second thing, Mr. Duffy, are you going to rest

24 next week?

25 MR. DUFFY: Yes, I think so, your Honor. The only

1 caveat, we don't know exactly how long the crosses are going
2 to take, but I believe so.

3 THE COURT: I understand. And that makes sense.

4 All right. At present, total elapsed time out of
5 the ten days available to each side, government has used up
6 six days, one hour, thirty minutes. The defense has used up
7 four days, one hour, twenty minutes.

8 We'll recess until 9:00 a.m. tomorrow morning.

9 We'll stand in recess.

10 THE CLERK: All rise.

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12 (Proceedings adjourned.)
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C E R T I F I C A T E

I, Cheryl B. Palanchian, Court Reporter
for the United States District Court for the
District of Massachusetts, do hereby certify that
the foregoing pages are a true and accurate
transcription of my shorthand notes taken in the
aforementioned matter to the best of my skill and
ability.

/s/ Cheryl B. Palanchian 11/16/2023
CHERYL B. PALANCHIAN

Registered Merit Reporter
Certified Realtime Reporter